

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

UNITED STATES OF AMERICA,

v.

CODY FRANCIS ORMOND

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CASE NUMBER 6:12-CR-00058(6)-RC

**REPORT & RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE**

On December 13, 2016, the Court conducted a hearing to consider the government's petition to revoke the supervised release of Defendant Cody Francis Ormond. The government was represented by Bill Baldwin, Assistant United States Attorney for the Eastern District of Texas, and Defendant was represented by Public Defender Ken Hawk.

Defendant originally pled guilty to the offense of Conspiracy to Possess with Intent to Distribute at least 40 Grams but less than 50 Grams of Methamphetamine, a Class C felony. The offense carried a statutory maximum imprisonment term of 20 years. The United States Sentencing Guideline range, based on a total offense level of 21 and a criminal history category of IV, was 57 to 71 months. On August 14, 2013, District Judge Leonard Davis sentenced Defendant to 57 months of imprisonment followed by 3 years of supervised release subject to the standard conditions of release, plus special conditions to include financial disclosure, drug testing and treatment, and a \$100 special assessment. On November 16, 2015, Defendant's terms of supervision were modified to include a search condition. On March 18, 2016, Defendant completed the term of imprisonment and began his term of supervised release.

Under the terms of supervised release, Defendant was required to refrain from excessive use of alcohol and from purchasing, possessing, using, distributing, or administering any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician. In its petition, the government alleges that Defendant violated this condition of supervised release by submitting a urine sample on July 8, 2016 at a drug testing site that presumptively tested positive for methamphetamine. The government alleges that when Defendant was told the sample would be sent to the laboratory for confirmation, he dumped out the urine. The government further alleges that on September 6, 2016, Defendant submitted a urine specimen that tested positive for methamphetamine. The government alleges that Defendant subsequently admitted in writing to using methamphetamine and marijuana on or about September 1, 2016.

Based on Fifth Circuit case law, the Court can find that illicit drug use constitutes possession. If the Court finds by a preponderance of the evidence that Defendant violated the conditions of supervised release using methamphetamine and marijuana, thus possessing those substances, Defendant will have committed a Grade B violation. U.S.S.G. § 7B1.1(a). Upon a finding of a Grade B violation, the Court shall revoke supervised release. U.S.S.G. § 7B1.3(a)(1). Considering Defendant's criminal history category of IV, the Guideline Imprisonment Range for a Grade B violation is 12 to 18 months. U.S.S.G. § 7B1.4(a).

At the hearing, the parties indicated that they had come to an agreement to resolve the petition whereby Defendant would plead true to violating the conditions of supervision by committing the acts alleged above. In exchange, the government agreed to recommend a sentence of 12 months and 1 day with no supervised release to follow, with the term of imprisonment to retroactively begin on November 1, 2016, the date of Defendant's arrest.

Pursuant to the Sentencing Reform Act of 1984, the Court **RECOMMENDS** that Defendant Cody Francis Ormond be committed to the custody of the Bureau of Prisons for a term of imprisonment of 12 months and 1 day with no supervised release to follow, with the term of imprisonment to retroactively begin on November 1, 2016. The Court **FURTHER RECOMMENDS** that drug treatment be provided to Defendant during the term of imprisonment and that the place of confinement be FMC Rochester, Minnesota in order to facilitate family visitation and address a medical condition.

So ORDERED and SIGNED this 14th day of December, 2016.



JOHN D. LOVE
UNITED STATES MAGISTRATE JUDGE